

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROGER DAVIS (deceased))	
Claimant)	
VS.)	
)	
CONTINENTAL STEEL)	
Respondent)	
and)	Docket No. 117,611
)	
ROYAL INSURANCE COMPANY)	
Insurance Carrier)	
)	
and)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from the September 19, 2002 Award entered by Administrative Law Judge Steven J. Howard. Oral argument was held before the Appeals Board (Board) in Topeka, Kansas on April 8, 2003. Stacy Parkinson was appointed and participated as a Board Member Pro Tem to serve in place of Board Member David Shufelt who recused himself from this appeal. Gary Peterson was also appointed and participated as a Board Member Pro Tem.

APPEARANCES

John David Jurcyk, of Roeland Park, Kansas, appeared on behalf of the respondent. J. Paul Maurin, III, of Topeka, Kansas, appeared on behalf of the Kansas Workers Compensation Fund. There were no other appearances.

RECORD AND STIPULATIONS

The Board considered the record and adopts the stipulations listed in the Award.

ISSUES

Whether respondent and its insurance carrier (respondent) is entitled to reimbursement from the Kansas Workers Compensation Fund (Fund) for the overpayment of benefits made to the dependents of the decedent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Nothing in K.S.A. 44-510b nor elsewhere in the Workers Compensation Act supports respondent's argument regarding Fund liability. The Award denying reimbursement should be affirmed.

The case between the decedent's dependents and respondent was terminated by Joint Petition and Stipulation and a December 14, 1987, Order. Respondent's current claim stems from an overpayment of death benefits by respondent to the decedent's dependents. Respondent contends it is entitled to reimbursement from the Kansas Workers Compensation Fund under K.S.A. 44-510b and K.S.A. 44-566a(e). K.S.A. 44-566a(e)(3) requires the Fund to reimburse an employer for amounts paid either voluntarily or pursuant to a preliminary order when, after a full hearing on the claim, it is determined the employer did not owe the benefits. Accordingly, that provision only applies to payment made pre-award. The benefits in this case were paid post-award, not pre-award. In addition, K.S.A. 44-566a(e)(5) provides for Fund liability for "any other payments or disbursements provided by law." Accordingly, this provision would not apply to payments made by mistake.

Neither the ALJ nor the Board have jurisdiction in this matter. According to the Workers Compensation Act, if the Fund has liability under the Act, then the Director certifies the amount to the Commissioner of Insurance. Thus, respondent's only option is to apply to the Director for certification of the overpayment, if any.¹

On March 21, 1997, respondent did apply to the Director for certification of overpayment. However, on October 27, 1997, then Assistant Director David Shufelt wrote

¹ See *McCulloch v. Dillon Companies, Inc.*, No. 217,405, 2000 WL 372295 (Kan. WCAB Mar. 31, 2000); *Workman v. City of Clyde*, No. 184,290, 1998 WL 462616 (Kan. WCAB Jul. 23, 1998).

respondent stating that . . . “the factual situation does not appear to meet the statutory requirements for the Director to certify reimbursement. . . .” Assistant Director Shufelt ended the letter by requesting that respondent provide the “legal basis relied upon for reimbursement in the instant case.” It appears a response was anticipated by the assistant director if respondent intended to pursue a claim for reimbursement. None was forthcoming. Therefore, the issue was still pending before the Director in September 2002 when the Administrative Law Judge (ALJ) denied the respondent’s request to order reimbursement.

Respondent also asks the Board to address the Fund’s standing. Unlike other types of Fund liability, the Fund has no right to litigate its liability for overpayment of benefits.² The above analysis of no jurisdiction, however, renders this issue moot.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Steven J. Howard dated September 19, 2002 should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Matthew H, Thiesing, Attorney for Respondent and Insurance Carrier
J. Paul Maurin, III, Attorney for Kansas Workers’ Compensation Fund
Steven J. Howard, Administrative Law Judge
Director, Division of Workers Compensation

² *Wasson v. United Dominion Industries*, 266 Kan. 1012, 974 P.2d 578 (1999).